STATE OF MICHIGAN

IN THE SUPREME COURT

SHARDA GARG

Plaintiff Appellee and Cross-Appellant,

v

MACOMB COUNTY COMMUNITY MENTAL HEALTH SERVICES, a governmental agency of MACOMB COUNTY

Defendant Appellant and Cross-Appellee. /

Supreme Court
No: 121361

Court of Appeals
No.: 223829

Macomb County Circuit Court
No. 95-3319 CK

RESPONSE BY DEFENDANT, MACOMB COUNTY COMMUNITY MENTAL HEALTH SERVICES TO PLAINTIFF'S APPLICATION FOR LEAVE TO APPEAL AS CROSS-APPELLANT

EXHIBIT

121361

AFFIDAVIT OF SERVICE

FILED

JUN 13 2002

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

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COUNTER-STATEMENT OF QUESTION PRESENTED

WHETHER PLAINTIFF FAILED BELOW TO ESTABLISH ENTITLEMENT TO PAST INTEREST ON FUTURE DAMAGES?

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COUNTER-STATEMENT OF FACTS

Defendant Macomb County Community Mental Health Services has filed an application for leave to appeal from the Court of Appeals' opinion affirming a judgment entered in the Macomb County Circuit Court on a jury verdict of $250,000 in favor of plaintiff, Sharda Garg. This brief is submitted in opposition to plaintiff's application for leave to cross appeal seeking to challenge the trial court's calculation of interest on the judgment. This issue on cross-appeal need not be reached by this Court should it determine, as defendant has submitted in its appeal, that defendant is entitled to judgment notwithstanding the verdict.

Plaintiff in this matter was awarded damages of $250,000 as the result of the jury's finding that, while plaintiff was not discriminated against, she was retaliated against because she "opposed sexual harassment or because she filed a complaint or charge about being discriminated against" in violation of the Elliott-Larsen Civil Rights Act. Plaintiff testified that, as a result of the alleged discrimination or retaliation, she sustained mental and emotional injuries and physical injuries in the nature of sleeplessness, increased blood pressure, loss of appetite and weight loss (Tr 4/6/98, pp 286-293). Plaintiff testified, for example:

> A: [By plaintiff]: I did become withdrawn. I don't sleep at night. When I think about what happened to me at work, you know, I get headaches. I know my blood pressure has been going up since that time and as of late, in emotional terms, I have become very depressed. [Tr 4/6/98, p 298.]

Upon further questioning by plaintiff's counsel, plaintiff testified:

> Q: Now, Mrs. Garg, is it your testimony that you testified that you had trouble sleeping and you have had headaches?
>
> A: Yes.

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Q: And how about your appetite?

A: My appetite changed altogether.

* * *

The Court: What problems did you have?

The Witness: Yes. I have lost a lot of weight over the period of two or three years, four years. I am like a rollercoaster all the time.

* * *

Q: And these symptoms that you indicated that you were having, ones that you reflected in your lifestyle and the way you felt physically and the way you slept, was the amount and quality and experience and intensity of these symptoms different than any of these kind of symptoms that you have had at other times in your life?

A: Absolutely.

Q: In what way?

A: I can tell when I am stressed out, and I am depressed, and when I am physically - when something is wrong with my body. I work in the field of being able to identify depression and stress and symptoms related to that versus medical problems. [Tr 4/6/98, pp 293-294.]

At plaintiff's request (Tr 4/14/98, pp 1250-1256, 8/6/98 opinion, p 2), the jury was instructed in accord with SJI2d 50.02. This advised the jury that plaintiff was seeking and that the jury could award damages for "physical pain and suffering" (Tr 4/22/98, pp 129-130). The jury was instructed:

> You should include each of the following elements of the damage which you decide has been sustained by plaintiff to the present time and that would be any physical pain and suffering, mental anguish, denial of social pleasure, and enjoyment, and any embarrassment, humiliation or mortification and the loss of her earning capacity. You should also include each of the following elements of damage which you decide plaintiff is reasonably certain to sustain in the future, and again that would be any physical pain and suffering, mental anguish, denial of

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social pleasure and enjoyment, embarrassment, humiliation and mortification and loss of earning capacity. [Tr 4/22/98, pp 129-130, emphasis added.]

Although defendant had specifically requested that the jury be given a verdict form which would break down future damages, the plaintiff opposed that request and the trial court agreed with plaintiff (8/6/98 opinion, p 2). As a result, the jury returned a general verdict assessing plaintiff's "damages at $250,000".

In an opinion and order of August 6, 1998, the trial court held that no interest would be awarded on future damages, pursuant to MCL 600.6013(1), as this was an action in which plaintiff had sought damages for personal injury (8/6/98 opinion). Plaintiff argued that no part of the verdict consisted of damages for personal injury because counsel in closing argument never requested any such damages (6/10/98 Brief in Support of Award of Interest, pp 2-3). Plaintiff argued in the alternative that if the court determined that plaintiff received damages for personal injury, then future wage loss and pension could easily be broken out for purposes of not awarding prejudgment interest (Id., pp 4-5).

Thus, at the urging of plaintiff, the trial court in its opinion of August 6, 1998, made an "equitable determination" as to what should be attributed to future damages. The court concluded that $15,000 would be attributed to future emotional damages. Noting that "plaintiff suggests in her brief that future wage loss and pension loss be considered as future damages", the court concurred and found a total sum attributable to future damages to be $141,150 (8/6/98 opinion, p 3). The court directed that interest would run on that amount commencing as of the date of the judgment. (Id.)

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The Court of Appeals held that the trial court properly concluded that plaintiff had sought "future damages" in that plaintiff had testified she sustained, and sought damages for, "bodily harm, sickness or disease."

This brief is submitted by defendant Macomb County Community Mental Health Services in opposition to plaintiff's cross appeal.

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ARGUMENT

PLAINTIFF FAILED BELOW TO ESTABLISH ENTITLEMENT TO PAST INTEREST ON FUTURE DAMAGES.

Entitlement to interest on a judgment is statutory and must be specifically authorized by statute. Department of Transportation v Schultz, 201 Mich App 605, 610 (1993). MCL 600.6013(1) provides that interest is allowed in a civil action as provided in that section, but that interest is not allowed on "future damages" from the date of filing of the complaint to the date of entry of the judgment.

It was clearly plaintiff's burden to establish entitlement to interest on future damages in accordance with this statutory provision. This, however, plaintiff failed to do.

MCL 600.6013(1) provides:

> (1) Interest shall be allowed on a money judgment recovered in a civil action, as provided in this section. However, for complaints filed on or after October 1, 1986, interest shall not be allowed on future damages from the date of filing the complaint to the date of entry of the judgment. As used in this subsection, "future damages" means that term as defined in Section 6301.

MCL 600.6013 provides:

> As used in this chapter:
>
> (a) "Future damages" means damages arising from personal injury which the trier of fact finds will accrue after the damage findings are made and includes damages for medical treatment, care and custody, loss of earnings, loss of earning capacity, loss of bodily function, and pain and suffering.
>
> (b) "Personal injury" means bodily harm, sickness, disease, death, or emotional harm resulting from bodily harm.

There can be no question but plaintiff here claimed to be suffering from "personal injury," defined as "bodily harm" or "sickness" in MCL 600.6013(1). At the urging of plaintiff's counsel, plaintiff testified on direct examination that she was

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suffering sickness including headaches, high blood pressure, trouble sleeping, and a loss of appetite as a result of the alleged retaliation/discrimination (Tr 4/6/98, pp 286-293). The jury at plaintiff's own request was explicitly instructed that it should award damages for future "physical pain and suffering." (Tr 4/22/98, pp 129-130.)

As the Court of Appeals reasoned in its opinion here:

> A clear and unambiguous statue must be enforced as written. See Sun Valley Food Co v Ward, 460 Mich 230, 2336; 596 NW2d 119 (1999) and Adrian School District v Michigan Public School Employees Retirement System, 458 Mich 326, 332; 582 NW2d 767 (1998). The plain language of MCL 600.6301 defines "future damages" as damages resulting from bodily harm, sickness, or disease. The instant plaintiff testified that she suffered from headaches and high blood pressure as a result of the alleged discrimination. This clearly constituted "bodily harm, sickness, or disease." Therefore, the trial court correctly calculated the interest from the date of the judgment on the future damages portion of the award.

In Hrlic v Kmart Corp, unpublished opinion per curiam of the Court of Appeals, rel'd 3/27/95 (Docket No. 159191) (copy attached as Exhibit A), the Court of Appeals held that prejudgment interest on future economic damages was not permitted in that age discrimination action under the Elliott-Larsen Civil Rights Act. The Court so held in that action because there, as here, plaintiff alleged she had suffered bodily injury in the form of diverticulitis and a peptic ulcer as a result of defendant's tortious conduct.

The trial court properly applied the rationale of Hrlic here. Here, as in Hrlic, plaintiff expressly testified to and sought damages for bodily injury in the form of headaches, high blood pressure, trouble sleeping, and a loss of appetite.

Plaintiff's reliance on Paulitch v Detroit Edison Co, 208 Mich App 656 (1995), lv grtd 451 Mich 899 (1996), vacated and lv den 453 Mich 970 (1996), and Phinney v Perlmutter, 222 Mich App 513 (1997), is misplaced. In each of these civil rights actions, the Court held that the plaintiff was entitled to prejudgment interest for future

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damages because the actions there did not result from personal bodily injury. In neither case did the facts reveal that the plaintiff sought or was awarded damages for sickness, or for any physical manifestations which clearly constitute personal bodily injury. As the Court of Appeals reasoned here:

> We acknowledge that in Phinney, supra, at 542, 562, and Paulitch v Detroit Edison Co, 208 Mich App 656, 661-663; 528 NW2d 200 (1995), this Court indicated that a plaintiff is entitled to prejudgment interest for future damages when the suit does not result from personal bodily injury. We find these cases sufficiently distinguishable from the instant case, however, because there was no indication in Phinney or Paulitch that the plaintiffs alleged physical manifestations resulting from discriminatory treatment.

This is a distinction which is critical and which has been recognized in an analogous context of determining whether there exists insurance coverage for civil rights claims. The Michigan Court of Appeals repeatedly has recognized that a civil rights action will in fact involve a claim for "bodily injury" where there is a physical manifestation of the alleged mental suffering. Greenman v Michigan Mutual Ins Co, 173 Mich App 88, 92 (1988), Ben Franklin Ins Co v Harris, 161 Mich App 86, 89 (1987). In each of these decisions, the Court held that because the complainant in the underlying action did not allege any physical manifestations of their mental injuries, there was no "bodily injury" as required to trigger coverage under the defendant employer's policy of insurance.

Plaintiff here, by affirmative testimony and instruction to the jury, sought damages for "personal injury" - for "bodily harm, sickness, disease, death, or emotional harm resulting from bodily harm."

Plaintiff's assertion that her damages could not have arisen from "personal injury" because there was no expert medical testimony that her emotional distress was caused by any bodily harm (brief on cross-appeal, p 7), is disingenuous. First,

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the statute does not limit the definition of personal injury to "emotional distress caused by bodily harm." Rather, it broadly includes "bodily harm, [or] sickness . . . or emotional harm resulting from bodily harm." Plaintiff's assertion of her physical manifestations of high blood pressure, loss of appetite and headaches clearly constitute bodily harm or sickness.

Moreover, when objection specifically was made to Mrs. Garg's testimony on these subjects on the ground that she was not a qualified expert to so testify, the objection was overruled at the urging of plaintiff's own counsel (Tr 4/6/98, p 294). Finally, plaintiff specifically requested, and the jury was specifically instructed, that plaintiff was seeking and that the jury could award damages "plaintiff is reasonably certain to sustain in the future [including] any physical pain and suffering . . ." (Tr 4/22/98, p 130). It is at best less than candid to assert that plaintiff did not seek or the jury did not award damages for bodily injury.

Plaintiff's affirmative opposition to use of a special verdict form which would have required the jury to delineate among past and future damages in a manner so that it could be determined that any part of plaintiff's damages did not arise from personal injury as defined by the statute clearly precludes plaintiff from so asserting now on appeal. See People v Bates, 91 Mich App 506, 516 (1979) (invited errors occasioned by trial counsel's tactics may not be assigned as grounds for reversal). Moreover, even assuming that plaintiff could claim some future damages which were not from personal injury, there is no basis in the record upon which this Court could make such a determination. There was no finding by the jury of future damages not caused by bodily injury. The jury returned only a general verdict as a result of

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plaintiff's affirmative opposition to a special verdict from breaking down the allocation of damages.

Indeed, defendant submits that by virtue of plaintiff's own affirmative objection to the verdict form and failure to ensure that the verdict was returned in a form in which the court could determine and distinguish between past and future damages, plaintiff should not have been permitted to recover any pre-judgment interest. Although defendant has not elected to raise this as an issue on appeal, in the unlikely event that the Court were to determine that plaintiff was entitled to interest on some portion of her future damages, the Court necessarily would have to remand for a new trial in order to permit the jury allocation necessary to such an allocation.[1]

In summary, plaintiff clearly failed to establish entitlement to and interest on future damages. It is plaintiff's burden as the party seeking damages and interest to establish entitlement to the same. Plaintiff testified to and by jury instruction demanded an award of future damages for bodily injury, then opposed a jury verdict which would have provided any breakdown of damages. Plaintiff is not entitled to relief on appeal.

---

[1] Although Judge Olzark offered an "equitable" allocation of damages, the court was clearly not empowered to do so with respect to Macomb County Community Mental Health Services, given its right to a jury trial here and its timely objection to the failure to use a verdict form which would have required the jury to make the findings upon which plaintiff must relief for her argument. See MCR 2.514(C) (waiver of jury trial as to issue of facts omitted from a special verdict form only if party fails to request its submission to the jury). As noted by the trial court in its opinion here, Macomb County Community Mental Health Services specifically requested a special verdict form.

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RELIEF REQUESTED

WHEREFORE defendant Macomb County Community Mental Health Services, respectfully requests that this Honorable Court reject plaintiff's argument on cross-appeal and grant defendant the relief sought in its appeal, consisting of judgment notwithstanding the verdict or, in the alternative, a new trial.

Respectfully submitted,

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STATE OF MICHIGAN

COURT OF APPEALS

DOLORES HRLIC and LEROY HRLIC,

Plaintiffs-Appellants,

v

K-MART CORPORATION, FRED SCHLICK, BETH SCHNELL, and JOSEPH SINISCHO,

Defendants-Appellees.

UNPUBLISHED
March 27, 1995

No. 159191
LC No. 90-004735-CZ

DOLORES HRLIC and LEROY HRLIC,

Plaintiffs-Appellees and Cross-Appellants,

v

K-MART CORPORATION, FRED SCHLICK, BETH SCHNELL, and JOSEPH SINISCHO,

Defendants-Appellants and Cross-Appellees.

No. 159734
LC No. 90-004735-CZ

Before: Hood, P.J., and Taylor and D. A. Servitto,* JJ.

PER CURIAM.

Plaintiff, Dolores Hrlic, an employee of defendant K-Mart Corporation for 17 years, was accused of stealing $20 or less while performing her job counting receipts, and was fired. She and her husband filed a multiple count complaint and prevailed on their claims of false imprisonment, age discrimination, wrongful discharge, and loss of consortium. The trial court remitted in full the damage award for wrongful termination as being duplicative of damages awarded for age discrimination, leaving plaintiff with a total award of $738,000. Plaintiffs and defendants filed separate appeals of right which have been consolidated. We reverse in part, and affirm in part.

Plaintiff argues that the trial court erred in failing to award attorney fees under the Elliott-Larsen Civil Rights Act [MCL 37.2101 et seq.; MSA 3.548(101) et seq.]. We disagree. The decision to grant or deny attorney fees under the civil rights act is discretionary, Howard v Canteen Corp, 192 Mich App 427, 437; 481 NW2d 718 (1991), and will not be reversed on appeal absent an abuse of discretion. The attorney fee provision in the Elliott-Larsen Civil Rights Act is intended to "encourage persons deprived of their civil rights to seek legal redress," and to "obtain compliance with the goals of the act and thereby deter discrimination in the work force. King v General Motors Corp, 136 Mich App 301, 307-308; 356 NW2d 626 (1984).

Unlike some civil rights actions which do not result in damage awards from which attorneys could derive payment, this action resulted in a large damage award. There was no evidence that plaintiff

* Circuit Judge, sitting on the Court of Appeals by assignment.

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would have had difficulty obtaining counsel but for the attorney fee provision. Further, the results of this case do not directly affect other employees. Thus, the outcome of this case does not necessarily promote compliance with the goals of the act, nor deter discrimination in the work force. Id. Because neither of the expressed goals of the act would be promoted by an award of attorney fees, the trial court did not abuse its discretion in declining to award plaintiff attorney fees.

Plaintiff next argues that the trial court erred in limiting the award of interest on future economic damages to commence on the date of the verdict rather than on the date of filing suit. Although we agree with plaintiff that the trial court erred in commencing interest on the date of the verdict, we do not agree that the appropriate date for the commencement of interest is the date of filing the complaint. Rather, we agree with defendant that interest commences the date of judgment.

Entitlement to interest on a judgment is statutory and must be specifically authorized by statute. Dept of Transportation v Schultz, 201 Mich App 605, 610; 506 NW2d 904 (1993). Pursuant to MCL 600.6013(1); MSA 27A.6013(1):

> (1) Interest shall be allowed on a money judgment recovered in a civil action, as provided in this section. However, for complaints filed on or after October 1, 1986, interest shall not be allowed on future damages from the date of filing the complaint to the date of entry of the judgment. As used in this subsection, "future damages" means that term as defined in section 6301.

MCL 600.6301; MSA 27A.6301, provides,

> As used in this chapter:
>
> (a) "Future damages" means damages arising from personal injury which the trier of fact finds will accrue after the damage findings are made and includes damages for medical treatment, care and custody, loss of earnings, loss of earning capacity, loss of bodily function, and pain and suffering.
>
> (b) "Personal injury" means bodily harm, sickness, disease, death, or emotional harm resulting from bodily harm.

Plaintiff suffered bodily injury in the form of diverticulitis and peptic ulcer as a result of defendants' tortious conduct. Pursuant to MCL 600.6013(1); MSA 27A.6013(1), interest for plaintiff's future lost wages should commence at the date of entry of judgment, not the date of verdict as decreed by the trial court.

Defendants argue that plaintiff failed to present sufficient evidence to support her claim of age discrimination. In reviewing this claim, we must view the evidence in a light most favorable to the plaintiff and give the plaintiff the benefit of every reasonable inference that can be drawn from the evidence. If, after viewing the evidence, reasonable people could differ, the question properly is left to the trier of fact. Mull v Equitable Life Assurance Society, 196 Mich App 411, 421; 493 NW2d 447 (1992).

A prima facie case of age discrimination can be made by proving either intentional discrimination or disparate treatment. Barnell v Taubman Co, Inc, 203 Mich App 110, 120; 512 NW2d 13 (1993). To establish a prima facie case of age discrimination under the intentional discrimination theory, plaintiff must show that (1) she was a member of a protected class, (2) she was discharged, (3) she was qualified for the position, and (4) she was replaced by a younger person. Id. (citing Matras v Amoco Oil Co, 424 Mich 675, 683; 385 NW2d 586 [1986].) Once plaintiff successfully presents her

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prima facie case, the burden of production shifts to defendants to articulate a legitimate, nondiscriminatory reason for plaintiff's termination. Featherly v Teledyne Industries, Inc, 194 Mich App 352, 358; 486 NW2d 361 (1992). The burden then shifts back to plaintiff to prove that the reason proffered by defendants was merely pretextual. Id.

At trial, plaintiff presented evidence that she was 59 years old at the time she was terminated. In fact, in their brief on appeal, defendants concede that "plaintiff proved her membership in a protected class and that she was discharged." Plaintiff testified that she had 17 years seniority with defendant and that she worked in the cash office position for 16 years without incident or negative comment from her supervisors, giving rise to the reasonable inference that plaintiff was qualified for the position she held. Finally, plaintiff presented evidence showing that she was replaced, not by a single person, but by a group of women, all of whom were younger than plaintiff. Accordingly, plaintiff met her burden of proving by a preponderance of the evidence a prima facie case of age discrimination. Id. Defendants offered evidence tending to show that they terminated plaintiff due to her misappropriation of corporate funds; a legitimate, nondiscriminatory reason for termination.

Plaintiff then presented evidence that no misappropriation occurred. Defendant's store manager, loss prevention manager, and district manager for loss prevention gave differing testimony with regard to the amount of money allegedly misappropriated. Nor did these three managers agree from which money bag the money was allegedly misappropriated. Plaintiff also presented evidence that the bag from which money was actually missing was counted by a night shift employee at a time when plaintiff was not present at the store. Further, the evidence presented tended to show that K-Mart's store manager was motivated to cut costs and increase profits. At the beginning of his tenure as manager, he announced that he would reverse the ratio of full time to part time employees, the latter being less expensive because they did not receive fringe benefits. Plaintiff's evidence tended to show that K-Mart's store manager personally discriminated against older employees, and was professionally motivated to do so.

Viewing this evidence in a light most favorable to plaintiff, we conclude that rational triers of fact could differ with regard to whether plaintiff's termination for misappropriation was a pretext for age discrimination. Accordingly, the question was properly left for the finders of fact. Mull, supra.

In a related issue, defendants argue that the trial court committed error requiring reversal in admitting anecdotal testimony from three older, former employees of defendant K-Mart. "Error may not be predicated upon a ruling admitting evidence unless a substantial right of the party was affected and a timely objection was made." Thorin v Bloomfield Hills Bd of Ed, 203 Mich App 692, 703-704; 513 NW2d 230 (1994); MRE 103(a)(1). In the instant case, not only did defendants fail to object to the testimony, the record indicates that defense counsel encouraged such anecdotal testimony. Because no objection was made and no substantial right of defendants was affected, the evidence was admissible to prove that K-Mart's store manager harbored personal prejudice against older employees and discriminated on the basis of age.

Defendants also argue that there was insufficient evidence to support a verdict of false imprisonment. False imprisonment is defined as "the unlawful restraint of an individual's personal liberty or freedom of locomotion." Clark v K-Mart Corp, 197 Mich App 541, 546; 495 NW2d 820 (1992). Manual seizure or its equivalent in some form of personal coercion is required. Id. at 547. Defendant asserts that there was no manual seizure or personal coercion, and thus, certain damages should be remitted in this case. We disagree.

Plaintiff testified that she went to the security office which contained a desk and chairs equipped with handcuffs. Once in the security office, plaintiff was accused of theft and drug use. Plaintiff

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became upset and wanted to leave but was told: "If you leave this office, we will issue a bench warrant and you will be arrested at home in front of your family and your neighbors and otherwise humiliated." We conclude that fear of both humiliation and public arrest based on false accusations is sufficient personal coercion to satisfy the restraint element of the tort. As the court ruled in denying defendant's motion for directed verdict, plaintiff "wasn't actually free to leave without consequences."

Reviewing the evidence in the light most favorable to plaintiff, we conclude that the evidence was such that rational triers of fact could differ with regard to whether plaintiff was personally coerced. Accordingly, the question was properly left for the trier of fact. Mull, supra.

Defendants assert that they are protected by the shopkeeper's privilege, MCL 600.2917; MSA 27A.2917 which provides:

> (1) In a civil action against a library or merchant, an agent of the library or merchant, or an independent contractor providing security for the library or merchant for false imprisonment, unlawful arrest, assault, battery, libel, or slander, if the claim arises out of conduct involving a person suspected of removing or of attempting to remove, without right or permission, goods held for sale in a store from the store or library materials from a library, or of violating section 356c or 356d of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.356c and 750.356d of the Michigan Compiled Laws, and if the merchant, library, agent, or independent contractor had probable cause for believing and did believe that the plaintiff had committed or aided or abetted in the larceny of goods held for sale in the store, or of library materials, or in the violation of section 356c or 356d of Act No. 328 of the Public Acts of 1931, damages for or resulting from mental anguish or punitive, exemplary, or aggravated damages shall not be allowed a plaintiff, unless it is proved that the merchant, library, agent, or independent contractor used unreasonable force, detained the plaintiff an unreasonable length of time, acted with unreasonable disregard of the plaintiff's rights or sensibilities, or acted with intent to injure the plaintiff.

The jury was instructed on this privilege and found that it did not pertain to the facts in this case. The evidence, when viewed in a light most favorable to plaintiff, was such that rational triers of fact could differ. The alleged theft took place four days prior to the detention. Thus, there was no immediate need to detain plaintiff. Accordingly, the question was properly left for the fact-finders. Mull, supra.

Defendants also argue that the trial court erred in denying defendants' motion to extend discovery. We disagree. "The circuit court's decision to grant or deny a discovery request is reviewed for an abuse of discretion." Harumann v Shearson Lehman Hutton, Inc, 194 Mich App 25, 28; 486 NW2d 53 (1992). Defense counsel filed their appearance on January 7, 1991, over two months after discovery closed. In denying defendants' motion to reopen discovery, the trial court observed that counsel entered the case after mediation and after discovery was closed, presumably with knowledge that those events had occurred. There had been ample time to schedule depositions of witnesses prior to the close of discovery. The failure of prior defense counsel to perform discovery to trial counsel's liking does not translate to error on the part of the court. "[A] party cannot seek reversal on the basis of an error that the party caused by either plan or negligence." Detroit v Larned Associates, 199 Mich App 36, 38; 501 NW2d 189 (1993). Accordingly, the trial court did not abuse its discretion in denying defendants' motion to reopen discovery.

We reject defendants' argument that the trial court abused its discretion in admitting evidence of defendants' employment contracts and annual salaries. The evidence was probative of defendants' financial incentive to discharge plaintiff. Further, defendant Schlick's bonus was connected to profits

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above a specified level, profits being related to cost efficiency. Thus, the trial court admitted information on salaries because the relationship between the fixed salary and the bonus potential was relevant to the strength of defendants' incentive to cut expenses. Defendants have failed to demonstrate that the trial court abused its discretion in admitting this evidence.

Finally, we reject plaintiff's argument that the trial court erred in remitting plaintiff's award for wrongful discharge. Plaintiff expressly testified that she intended to retire at age 65. There was no evidence that plaintiff would work beyond age 65. Thus, there is no factual basis for an award of $375,000 in economic damages. Accordingly, the trial court did not abuse its discretion in granting remittitur because the record supports an award of economic damages only to the level awarded in the age discrimination count.

Defendants raise two other claims of error on appeal which are not preserved for this Court's review. Thus, we decline to address them.

We reverse the lower court with regard to the date when interest begins to accrue on future economic damages to the date of judgment, and remand for entry of judgment consistent with this opinion. In all other respects, we affirm.

/s/ Harold Hood
/s/ Clifford W. Taylor
/s/ Deborah A. Servitto

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